Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	
Opportunities of Spectrum Through	)	GN Docket No. 12-268
Incentive Auctions	)	
	)	
LPTV, TV Translator and FM Broadcast	)	MB Docket No. 18-214
Station Reimbursement; Expanding	)	
the Economic and Innovation	)	
Opportunities of Spectrum Through	)	
Incentive Auctions	)	

COMMENTS OF THE
LPTV SPECTRUM RIGHTS COALITION, LLC

September 25, 2018

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth St, S.W.
Washington, DC 20554

RE: Media Bureau Opens MB Docket No. 18-214, LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

Dear Ms. Dortch:

The LPTV Spectrum Rights Coalition, LLC (Coalition), has for most of the six year Incentive Auction period, represented the interests of 100's of Class A and LPTV licensees with literally 1000's of FCC licenses and new construction permits. It was instrumental in helping to secure from Congress the $150 million in displacement relocation funding for both the industry and its' members. As such, it is concerned about the following points within the NPRM:

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I. INCONSISTENT RULES

Congress included a specific time period to be eligible for relocation funding (the station was licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017). But an unknown number of stations which would otherwise be eligible may not quailfy now because of this requirement. The calendar date requirement is not consistent with the actual operating rules available to secondary licenses, and we see an inherent conflict between what Congress passed and actual business practices based on the rules. There are no daily operating requirements for LPTV, and requiring this for reimbursement funding creates a situation where the displaced licensee may not qualify for funding, while still receiving a new permit to move their station to. This simply is not fair to all which are displaced.

Be that as it may, the FCC is required to either follow what Congress has legislated, or go back to Congress for a correction to the language. How many of the almost 2000 stations issued a new channel will not be eligible for relocation funding? The FCC should do this analysis instead of waiting for licensees to figure it out. We need

II. OUTSIDE CONTRACTOR

The Commission anticipates hiring an outside contractor to audit and administer the displacement funding process. While this type of work is similar to what was done for the auction eligible stations and their reimbursement process, the LPTV and TV translator operating environments, conditions, and equipment are different. Almost every operator has some sort of unique equipment configuration to their broadcasting plant, and as such, a contractor will need to be well versed in the wide variety and unique situations which make LPTV and TV translators work in the real world. We urge the Commission to require that the contractor either have experience with secondary license operational requirements, or consult with the industry to establish an understanding of it.

III. REASONABLY INCURRED EXPENSES

The NPRM addresses the question of the use of full service masks, and should it and other expenses be allowed. We urge the contractor to understand the need for many types of equipment which may assist LPTV and translator licensees achieve an acceptable level of service in their communities. Many in the LPTV industry did not reinvested into new equipment if they knew they were going to be displaced by the auction. And many of the transmission systems are in need of replacement and upgrading. Upgrading when they build out their new construction permits should be allowed as much as possible. Replacing old equipment is not enough, but meeting the new technical needs of the new permits they are issued is paramount. Another issue are STL's, studio to transmitter links, which for many displaced and rebuilding stations could be a major expense. These also should be included in any catalog of eligible expenses.

IV. EARLY DISPLACED STATIONS (aka PHASE ZERO DISPLACEMENTS)

This Coalition, as the identifier and promoter of "Phase Zero", the first 16 months of the post Incentive Auction transition period, supports the position in the NPRM that the stations displaced by T-Mobile, and which filed prior to the displacement filing window, should be eligible for relocation funding. The only problem we see is that these early moving stations did not have the benefit of what is eligible or not, and have already expended capital and resources. And the same can be said of any displaced and moving station prior to these displacement funding rules being adopted. We also suggest that the FCC ask T-Mobile to disclose exactly how many stations they have to date provided 2nd move relocation funding to, and how many they anticipate will not be needing Federal reimbursement. In practice, based on field reports from our membership, is that the T-Mobile reimbursement funding will not be a large number, and the FCC should expect to have to cover the vast majority of these expenses.

V. PRIORITIZATION OF HARD COSTS OVER SOFT COSTS

The NPRM proposes to priortize the eligibilty of hard costs over soft costs in order to stretch out the relocation funding so that the actual television services are maintained. In many cases these costs will not be a significant percentage of the total eligible costs. But, we assume, from first hand field reports, that consulting engineering, field engineering, tower installation, freight, local legal, and FCC legal costs may be much larger in some, if not many cases. It may be better for the FCC to first obtain an estimate from the approximate 1,962 filed and accepted applicants for displacement channels.

VI. REIBURSEMENT FOR COMPARABLE COVERAGE

The FCC asks in the NPRM about the purchase of transmitters, transmission lines, and other equipment that is not "comparable" to their existing equipment, in order to service their existing and/or new coverage population. We agree, but want to emphasize, that no matter what the new coverage is of an eligible entity, if they have a valid new displacement channel construction permit, that unique population coverage is what the hard and soft costs should be used for. Many LPTV will have totally different coverages with their new channel assignments, and as such, they may need completely new transmission chains. An example is switching from UHF to VHF, which many major market stations will need to do, and which have far different operating expenses. This also includes having to switch towers, as in from a low cost local one, to a national company, which may have higher costs. Or having to move from your own tower, to another one where you have to now have to pay.

VII. FULL SERVICE MASK FILTERS

The NPRM asks to what extent could the Commission reimburse the costs for full service mask filters that could promote spectrum efficiency, even if the station technically could operate at its new location with a stringent or simple mask. This is an interesting question, and one which alludes to the conundrum the "TV White Space" advocates and practioners would like to see addressed. We totally agree with the concept of allowing reimbursement for full service masks. In practice, these filters are in common use, as LPTV has to fit into the inbetween of primary station coverages, and may in many cases be the only engineering solution.

VIII. JANUARY 1, 2017 EXPENDITURE ELIGIBILITY DATE

January 1, 2017 is just about nine (9) months before the first of the T-Mobile early deployment displacments began to happen, and as such, nine months before what is being proposed as when eligible expenses can be claimed. Just who would have started this early to conduct studies, and spend money on equipment? We need to remember that there are two categories of displacement, those displaced by the auction itself, and had channel asssignments from UHF 50-38; and, those displaced by the repack and moving primary stations, from UHF 36, to VHF 2. Those displaced by the auction may have started to expend funds, but on what? Certaintly not equipment, as who knows which channel you are moving to? So no hard costs at all. What you may have started to reasonably expendited funds on most likely will have been what are described as soft costs, engineering and legal. Engineering we can understand, as you may have wanted to get an early start on which channels to move to. But as of that date, we do not think anyone really could have known that information in any high percentage of certainty.

IX. <u>EQUIPMENT UPGRADES AND REUSE OF EXISTING EQUIPMENT</u>

The NPRM asks if displaced LPTV/translator stations should reuse their own equipment to the extent possible, and that displaced LPTV/translator stations seeking reimbursement provide a justification why it is reasonable to purchase new equipment rather than reuse existing equipment. We understand and acknowledge the role the FCC needs to play as the custodian of the funds from Congress. But the FCC needs to understand that a primary impact to LPTV from the lengthy now 6+ year long process of the Incentive Auction, is that many LPTV simply did not upgrade for many years due to the vast uncertainty of the displacement process, and until recently, the lack of Federal relocation funding assistance. The contractor which is chosen by the FCC will need to be instructed that just because you can operate with older equipment, you may need to upgrade for all kinds of reasons, such as power consumption, realiablity, EAS compatibilties and upgrades, and because of new transmission locations.

The contractor also needs to understand that any new transmitter will probably already have the software/firmware upgrade capaibilites to ATSC 3.0, and this feature should not disqualify any purchase from eligibility. Although we agree that upgrades for ATSC 3.0 as the sole reason should not be eligible for funding.

X. <u>INTERIM FACILITIES SHOULD QUALIFY FOR RELOCATION FUNDING</u>

The NPRM says that the FCC believes it is unlikely that LPTV/translator stations will construct interim facilities as part of the displacement process. Does this include STA's, Special Temporary Facilities? Most likely yes. And with potentially years of operation using an STA due to both the early T-Mobile Phase Zero deployments and subsequent displacements, and now the multi-year phased repacking process, an LPTV could find itself on an STA for a long time. And all because of an auction-induced displacement. If it is T-Mobile related, then the STA would first be paid by the licensee, wait years, and then T-Mobile would pay for the move, and supposedly not the FCC. But if not T-Mobile related, then your interim facility may be needed only be a year or maybe two years long, assuming the repack happens on schedule.

XI. <u>LOST REVENUES IS A RABBIT HOLE</u>

While the concept of receiving compensation for lost revenues is relevant, it simply is not practical to implement. Lost ad revenue, lost channel lease monthly payments, lost commissions from per inquiry spots, barter arrangements, payments from MVPD, all of these will be lost by most any LPTV at some time in this process. If the NPRM suggests priortizing hard costs over soft costs, then we suggest that soft costs be prioritized over lost revenues for sure. Those soft costs can quickly add up to tens of thousands in professional fees and services, including tower rigging, equipment replacement, etc. The entire concept of lost revenues should not even be studied until the FCC knows exactly what the hard costs and soft costs will add up to.

XII. WHAT TO STUDY NOW BEFORE THE RULES ARE PASSED

The FCC should immediately study how many of the 1,961 filed displacement applications not does qualify for relocation funding due to the minimum operating daily and calendar requirements of the legislation. If a station filed to be dark for any or part of the qualifying period should be the first test to pass, and one which the FCC should decide on now. Next would be the second test, and the filing of documentation to prove the hrs. of programming requirement. The final rulemaking should first incorporate the data from the FCC applying the first test. This will assist the FCC in understanding the true scope of the funds needed.

XIII. COSTS TO RESOLVE MUTUALLY EXCLUSIVE APPLICATIONS

The NPRM recommends not to reimburse stations for costs in resolving mutual exclusivity, including engineering studies and preparing application amendments, or the payment of other stations' expenses as part of a settlement. While we agree with this in principle, in practice, the engineering study you pay for to resolve an MX, will almost certaintly be the study you used to file to obtain your new channel. We recommend that whichever the final study is that you use to obtain your new channel assignment be qualified as an eligible soft expense. This recommendation is contingent on all other final engineering studies by non mutually exclusive applications be included.

XIV. STATIONS WITH OTHER SOURCES OF FUNDING

The NPRM asks how to address the interplay between the expanded Reimbursement Fund and such pre-REA funding for LPTV relocation. Our recommendation is simple. If the eligible station needs to move twice, it should get funding from whomever twice. In practice, if a state agency reimburses a station for some or all of their moves, then the FCC should also pay. Same with T-Mobile funding. All additional sources of funds should not be used against an eligible entity's eligibilty for funding. If you have a valid insurance claim, that is none of the government's business. And the state agency maybe paying costs for either or both what the FCC has not yet paid, or is not going to pay. Probably the best test to apply for eligible costs would be whatever is needed to keep the service going during a specific time period. An example would be that a state agency is paying upfront to get the channel move completed, and then the licensee is reimbursed by the FCC for whatever is finally determined eligible. Same with the T-Mobile funding for LPTV, as funding was needed from both sources to keep the station on air, and move twice.

XV. ELIGIBILITY CERTIFICATION

The NPRM states that a third party firm on behalf of, or in conjunction with, the Media Bureau may conduct audits, data validations, site visits or other verifications to substantiate the supporting evidence and representations of entities that certify that they meet the eligibility criteria adopted in this proceeding to the extent necessary. We suggest that as much of this process be done online as possible, and that field visits for verification only be done with prior planning and approval. Most urban LPTV transmission facilities are tightly secured and highly restricted access. Further, the contractor needs to be doing this independently of the FCC inspection process, and not part of it. The focus of the contractor should be audits, data validations, and site visits to prevent waste, fraud, and abuse, and to maximize the amount of money available for reimbursement. It should not be FCC compliance issues.

We concur with the NPRM to allow eligible LPTV entities to indicate their actual costs instead of providing estimates on the Reimbursement Form for costs already incurred in their initial filings with the Commission.

We concur with the submission of estimates based on a revised cost catalog which could more readily determine a reasonable estimate for newly eligible stations than the current form used by full power and Class A stations.

XVI. REIMBURSEMENT ALLOCATIONS

The NPRM states that once the Media Bureau completes its review of the Eligibility Certifications and Reimbursement Forms, it will issue an initial allocation from the Reimbursement Fund to each eligible LPTV/translator station, which will be available to the entity to draw down as expenses are incurred. We disagree with this approach and favor a single, lump sum award, made after the contractor and FCC have made their allocation. It simple is asking too much for our small business owners to be subjected to yet another lengthy, time consuming, service delaying bureaucratic process. Allocate once based on what is submitted and approved!

XVII. PRIORITIZATION OF CERTAIN COSTS

The NPRM states that to the extent that the total amount of reimbursement funds available to LPTV/translators or FM stations may not be not sufficient to cover all eligible expenses at the end of the program, and it may be necessary to establish a prioritization scheme for reimbursing eligible expenses. We concur with this approach, but object to a rolling, not sure what you will finally get allocation process. Figure it all out first, add it up, and distribute it out in one lump sum, and be done with it once the accounting comes back, and audits completed.

Respectfully submitted,
Michael Gravino, Director